



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: FEBRUARY 09, 2023

IN THE MATTER OF:

Appeal Board No. 626812 A

PRESENT: MARILYN P. O'MARA, MEMBER

The Appeal Board, on its motion pursuant to Labor Law § 534, has reopened and

reconsidered Appeal Board Nos. 626083, 626084 and 626085, filed October 24, 2022, which dismissed the claimant's appeal as untimely and continued in effect the decisions of the Administrative Law Judge, filed August 24, 2022, which sustained the initial determinations disqualifying the claimant from receiving benefits for twelve months, effective September 17, 2019, on the basis that the claimant lost employment as a result of an act constituting a felony in connection with that employment, and, in the alternative, disqualifying the claimant from receiving benefits, effective September 17, 2019, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by NYS OPWDD CO TACONIC DDSO prior to September 17, 2019 cannot be used toward the establishment of a claim for benefits; charging the claimant with an overpayment of \$12,844 in benefits recoverable pursuant to Labor Law §

597 (4); charging the claimant with an overpayment of \$4,940 in Extended Benefits recoverable pursuant to Labor Law § 597 (4); charging the claimant

with an overpayment of Federal Pandemic Unemployment Compensation of \$10,200 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation of \$6,422 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Lost Wages Assistance benefits of \$1,800 recoverable pursuant

to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$5,160.90 on the basis that the claimant made a willful misrepresentation to obtain benefits.

We reopened our decisions because the claimant contended that he had not received the Judge's decisions in a timely manner.

Our review of the record reveals that the case should be remanded to hold a hearing. The claimant contended that he was not called at the adjourned August 23, 2022 hearing. A file document reveals that he had provided an alternate phone number for the hearing; however, he was not called at that number. The claimant should produce any other document in addition to the certificate of conviction, dated April 5, 2022, to substantiate his contention that he was ultimately convicted of a misdemeanor, rather than a felony.

The certificate of conviction, dated April 5, 2022, should be entered into evidence after the appropriate confrontation.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Board and the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the claimant should produce any other document to substantiate his contention that he was ultimately convicted of a misdemeanor, rather than a felony; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and

which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER